COMMITTED *to* FAIRNESS

2005 Appeal Commission & Medical Review Panel Annual Report

THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

INTRODUCTION

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2005 to December 31, 2005 inclusive.

The Appeal Commission is separate and independent from the Workers Compensation Board (WCB) and is the final level of decision making in the WCB appeal structure. The Appeal Commission has exclusive jurisdiction to hear and decide appeals that arise from decisions made by the WCB. The independence of the Appeal Commission ensures that appeals from workers and employers are heard by an impartial panel with no previous involvement or interest in the matters under appeal.

The Appeal Commission consists of full and part-time appeal commissioners who are appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under *The Workers Compensation Act* (the *Act*) as a separate and independent process from the WCB and the Appeal Commission. Medical Review Panels allow questions to be asked of an independent panel of medical experts and an impartial medical opinion obtained on a worker's claim. The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or Appeal Commission.

The Minister responsible for the *Act* appoints the Medical Review Panel Chair and Alternate Chair. The independence of the Chairs, and the ability of the employer and worker to select physicians with no previous involvement to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar is responsible for providing administrative support to both the Appeal Commission and Medical Review Panels.

The Appeal Commission and Medical Review Panel activities and statistics are reported separately, as both are independent from the Workers Compensation Board.

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Mission Statement

To ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

Values

Professionalism
The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision making, and accountability, while respecting differing and shared values and perspectives.

Public Integrity
The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision making process.

Responsive to Change
The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

Interdependence
All Appeal Commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision making.

Respectful Work Environment
Appeal Commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

a message from the CHIEF APPEAL COMMISSIONER

I am pleased to present the annual report of the Appeal Commission for the year 2005.

The Appeal Commission is committed to fairness. This commitment is reflected in our mission statement and is evident in our processes, hearings and decisions. Fairness is expected by our stakeholders and required by our statute. Anything less is unacceptable. The Appeal Commission, individual commissioners and staff members strive at all times to meet this commitment.

The Appeal Commission plays an important role in Manitoba's workers' compensation and administrative justice systems. The Appeal Commission is the final appeal body under *The Workers Compensation Act* (the *Act*). It provides an independent forum for the resolution of concerns for persons who are not satisfied with the decisions of the Workers Compensation Board (WCB). It also serves as the final appeal body under *The Victims Bill of Rights* and the *Government Employees Compensation Act* for federal government employees working in Manitoba.

The year 2005 saw the first major changes to the *Act* since 1992. The changes involve many aspects of the workers compensation system. Some changes deal directly with the Appeal Commission, affecting its mandate and operations. These include removing the Appeal Commission's jurisdiction to deal with constitutional questions, establishing fixed term appointments for appeal commissioners, and authorizing the Chief Appeal Commissioner to decide issues of conflict of interest. With most changes becoming effective January 1, 2006, the Appeal Commission is preparing for appeals involving the new provisions. Information sessions on the changes have been held for both appeal commissioners and staff.

The Appeal Commission is participating with other Manitoba administrative tribunals in sponsoring continuing education sessions. In 2005 sessions were held dealing with the roles of tribunal members, judicial review of tribunal decisions and decision writing. A first Manitoba conference for tribunal members is being considered in 2006.

Seminars were also held for commissioners on a variety or topics ranging from lower back injuries to permanent partial impairment awards. These sessions help to develop and maintain our skills and assist in dealing with the complicated factual, legal and medical issues which arise during appeals.

This report contains statistics which detail the work of the Appeal Commission. Of particular note is the increase in cases decided by the Appeal Commission from 173 in 2004 to 196 in 2005. This is the third consecutive year of increased case volumes.

The Appeal Commission operates with a system of full and part-time appeal commissioners. Timely and competent appointments are essential to the effective operation of the Appeal Commission. I would like to thank the Minister for her assistance and cooperation in ensuring that timely and competent appointments are made.

a message from the

CHIEF APPEAL COMMISSIONER

In December 2005, Robert MacNeil retired. Rob served as a full-time presiding officer, representing the public interest from January 1993, a period of 13 years. During this time Rob presided over nearly 1500 oral hearings and reviews. He made a huge contribution to the Appeal Commission. His professionalism and integrity were recognized by all who dealt with him. On behalf of all commissioners and staff, I thank Rob for his service to the workers' compensation system and wish him the best in retirement.

Three other experienced part-time members also left the appeal commission in 2005. Paul Challoner completed his final case after seven years of service, Bonnie Popowich after four years and Christine Harapiak after one year of service. I thank them for their service and commitment.

Three new part-time appeal commissioners were appointed to the Appeal Commission in 2005:

Margaret Bencharski:	employer representative
Ron Koslowsky:	employer representative
Kris Dangerfield:	public interest representative

As well, Lee Ann Martin was appointed to serve as a full-time presiding officer, representing the public interest, and will commence her duties in early 2006.

In addition, five part-time appeal commissioners were re-appointed in 2005:

Bill Leake:	worker representative
Jane MacKay:	employer representative
Mira Thow:	public interest representative
Sherri Walsh:	public interest representative
Byron Williams:	public interest representative

Finally, I would like to recognize the dedicated and competent staff in the Office of the Registrar. Their assistance and support are essential to the Appeal Commission's successful operations.

I wish to thank all commissioners and staff for their commitment and hard work. I believe that through their efforts the Appeal Commission has achieved its commitment to fairness.

The Appeal Commission looks forward to a challenging and rewarding 2006.

Sincerely,

Alan Scramstad

about the APPEAL COMMISSION

The Appeal Commission was established by legislative amendment to *The Workers Compensation Act* (the *Act*) in July 1990. The Appeal Commission is the final level of appeal in the workers compensation system. The Appeal Commission operates separately and independently from the WCB and is solely responsible for hearing all appeals from workers and employers concerning WCB Review Office or Assessment Committee decisions.

The full and part-time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. The *Act* requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the *Act*. The Chief Appeal Commissioner is responsible for the operation and conduct of matters relating to the Appeal Commission as established by the *Act*.

The Appeal Commission's procedure is governed by Regulation 279/91, *Appeal Commission Rules of Procedure*. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar and the Appeal Panels to ensure that the integrity of the appeal system is protected and maintained.

Panels of three commissioners, representing public, worker and employer interests respectively, hear appeals. The commissioner representing the public interest is the Presiding Officer of the panel and is responsible for the conduct of the hearing/review and panel meetings.

Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness. All parties to an appeal (i.e., the employer, worker and their representatives) are given an equal opportunity to present their case.

The Appeal Commission is a non-adversarial enquiry forum where parties with a direct interest in a matter provide oral or written evidence. An Appeal Panel has the ability to ask questions or obtain additional evidence which ensures that the panel has all the information necessary to reach a fair decision.

An Appeal Panel may hear witnesses from either or both parties and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a review of the file which would not require the attendance of any party.

The Appeal Commission also acts as the final level of appeal for the claims of victims of crime filed under the provisions of *The Criminal Injuries Compensation Act* and *The Victims' Bill of Rights*.

method of APPEAL

Appellants can request a file review or oral hearing, however, the Chief Appeal Commissioner, or an Appeal Panel addressing an appeal, have the final authority to determine the most appropriate method for an appeal.

File Review

An appeal can be decided by a file review if all the issues are easy to understand from the file documents. The panel reaches a decision after it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a file review, interested parties do not have to appear in person before the appeal panel. Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment where no wage loss is involved
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute

Oral Hearing

Oral hearings are the most common appeal forum. If the appeal is more complex, it will probably be decided by an oral hearing. In this method, the parties requesting the hearing must appear in person. At the hearing, parties present the appeal to the panel verbally. The appeal can be supported by a written submission. Witnesses may attend in support of the appeal. The Appeal Commission, however, must be advised if witnesses will be attending. Some examples of appeals commonly decided by an oral hearing are:

- where additional evidence is to be presented
- where there is a fatality
- where serious injury has occurred
- where an occupational disease is involved
- where the decision may have an important impact on how WCB policy is interpreted or applied
- where the facts are in dispute

about the APPEAL

General Hearing / Review Information

- Hearings and reviews are scheduled as soon as parties are fully prepared to proceed.
- Hearings are conducted in private.
- A worker's access to their file information is governed by subsection 101(1.1) of the *Act* and the employer's access is governed by subsection 101(1.2). File access generally takes up to six weeks but can take longer if objections to the release of information are received.
- Any evidence concerning an appeal must be provided to the Registrar no later than five business days before the file review or hearing.
- A court reporter records the proceedings at all oral hearings. After the hearing, a transcript is produced and becomes part of the file record.
- The Appeal Commission provides interpreter services free of charge, where needed.
- Pursuant to Regulation 279/91, *Appeal Commission Rules of Procedure*, a decision of a panel shall be rendered within 60 days of the completion of the file review or hearing.

After an Appeal

The Appeal Commission cannot amend, clarify or change its decision once it has been rendered. This means that once a decision is made, the panel cannot provide further reasons, clarification or explanations for its decision. As well, the panel cannot consider further arguments or submissions by the parties to the appeal once a decision has been made.

The *Act* provides two limited options for reconsideration of an Appeal Commission decision.

If a party to an appeal feels the panel has acted outside its authority or has erred in applying Workers Compensation legislation, policy or regulations, the party can approach the WCB Board of Directors. If the Board of Directors determines that an error has been made, the Board can stay or set aside the decision and order that the case be re-heard. The Board of Directors is unable to set aside a decision of the Appeal Commission if it has acted within its jurisdiction.

If a party with a direct interest acquires new evidence after the hearing, the party may apply to the Chief Appeal Commissioner to request reconsideration of the previous decision. If the Chief Appeal Commissioner decides that the evidence meets the requirements of the *Act*, a new hearing on the matter is ordered. The Chief Appeal Commissioner does not have a general power of reconsideration and is unable to consider further arguments about the evidence that was before the original panel.

the full-time APPEAL COMMISSIONERS

The Chief Appeal Commissioner and full and part-time commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

As of December 31, 2005, the full-time commissioners were (left to right)

Allan Finkel, Appeal Commissioner (Employers)

Robert MacNeil, Presiding Officer (Public Interest)

Margaret Day, Appeal Commissioner (Workers)

Alan Scramstad, Chief Appeal Commissioner (Public Interest)

The Appeal Commission lost its longest serving commissioner when Rob MacNeil retired after 13 years. Lee Ann Martin has been appointed as Rob's replacement.

the part-time APPEAL COMMISSIONERS

As of December 31, 2005, the Appeal Commission had eleven part-time appeal commissioners, four representing the public interest, four representing workers and three representing employers. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase and to maintain their level of expertise.

COMMISSIONER WORKSHOPS *and* CONTINUING EDUCATION

Full and part-time appeal commissioners attend workshops throughout the year on topics related to workers compensation and administrative tribunals. As part of their training, workshops were held in 2005 on:

- Lower Back Injuries
- Functional Capacity Evaluations
- Permanent Partial Impairment Awards
- Changes to Workers Compensation: "What You Need to Know"

In addition to the above workshops, commissioners participated in the following external training:

- Manitoba Council of Administrative Tribunals sessions: "Role and Responsibilities of Tribunal Members", "Decision Writing", "The Top Ten Mistakes in Administrative Decisions That Lead to Reversal on Appeal"
- Council of Canadian Administrative Tribunals conference "Administrative Justice in the Modern Canadian Mosaic"
- British Columbia Council of Administrative Tribunals conference "A Decade of Achievement: Aspirations for the Future"
- Canadian Bar Association Administrative and Labour Law Conference: "Surviving in a Sea of Change: New Solutions for Recurring Problems"
- Conference of Ontario Boards & Agencies conference "Frontline Justice: Nourish to Flourish"

Appeal Commission Statistics

Workers Compensation Statistics

TOTAL APPEALS	Year Ending 2005	Year Ending 2004	Year Ending 2003
Appeals carried forward from previous year	38	31	27
Panel hearings held (by appeal)	156	143	128
Panel reviews held (by appeal)	38	40	39
Cases in process	(32)	(38)	(31)
Cases adjourned	(4)	(3)	(4)
TOTAL	**196**	**173**	**159**
Appeals accepted	58	51	42
Appeals partially accepted	15	16	23
Appeals not accepted	123	106	94
TOTAL	**196**	**173**	**159**
Percentage accepted	29.6%	29.5%	26.4%
Percentage partially accepted	7.6%	9.2%	14.5%
Percentage not accepted	62.8%	61.3%	59.1%

POST HEARING ACTIVITIES (CASES IN PROCESS)	Year Ending 2005	Year Ending 2004	Year Ending 2003
Cases awaiting further information requested by the Panel	13	11	11
Cases awaiting decision	1	3	3
Decision writing	18	24	17
TOTAL	**32**	**38**	**31**

TOTAL WORKER APPEALS

	Year Ending 2005	Year Ending 2004	Year Ending 2003
Appeals accepted	54	46	40
Appeals partially accepted	15	16	23
Appeals not accepted	115	88	81
TOTAL	**184**	**150**	**144**
Percentage accepted	29.3%	30.6%	27.8%
Percentage partially accepted	8.2%	10.7%	16.0%
Percentage not accepted	62.5%	58.7%	56.2%
Number of workers represented by:			
Legal Counsel	9	18	19
Union Representative	35	26	40
Worker Advisor	89	52	28
Advocates	10	14	7
Self Representation	38	37	43
Other	3	3	7

TOTAL EMPLOYER APPEALS

	Year Ending 2005	Year Ending 2004	Year Ending 2003
Appeals accepted	4	4	2
Appeals partially accepted	0	0	0
Appeals not accepted	8	18	13
TOTAL	**12**	**22**	**15**
Percentage accepted	33.3%	18.2%	13.3%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	66.7%	81.8%	86.7%
Number of employers represented by:			
Legal Counsel	1	2	0
Advocate	4	3	3
Employer Agent	7	15	10
Self Representation	0	2	2

EMPLOYER APPEALS TO CLAIM / REHABILITATION ISSUES	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	3	3	2
Appeals partially accepted	0	0	0
Appeals not accepted	7	15	11
TOTAL	**10**	**18**	**13**
Percentage accepted	30.0%	16.7%	15.4%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	70.0%	83.3%	84.6%

EMPLOYER APPEALS TO ASSESSMENT ISSUES	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	1	1	0
Appeals partially accepted	0	0	0
Appeals not accepted	1	3	2
TOTAL	**2**	**4**	**2**
Percentage accepted	50.0%	25.0%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	50.0%	75.0%	100%

TOTAL THIRD PARTY APPEALS	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	0	1	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
TOTAL	**0**	**1**	**0**
Percentage accepted	0%	100%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	0%	0%	0%
Number of third parties represented by:			
Legal Counsel	0	1	0
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocates	0	0	0
Self Representation	0	0	0
Other	0	0	0

CASE TYPE CLAIM	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	54	44	42
Appeals partially accepted	13	13	19
Appeals not accepted	111	97	85
TOTAL	**178**	**154**	**146**
Percentage accepted	30.3%	28.6%	28.8%
Percentage partially accepted	7.3%	8.4%	13.0%
Percentage not accepted	62.4%	63.0%	58.2%

CASE TYPE REHABILITATION	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	3	5	0
Appeals partially accepted	2	3	4
Appeals not accepted	11	6	7
TOTAL	**16**	**14**	**11**
Percentage accepted	18.8%	35.7%	0%
Percentage partially accepted	12.4%	21.4%	36.4%
Percentage not accepted	68.8%	42.9%	63.6%

CASE TYPE ASSESSMENT	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	1	2	0
Appeals partially accepted	0	0	0
Appeals not accepted	1	3	2
TOTAL	2	5	2
Percentage accepted	50.0%	40.0%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	50.0%	60.0%	100%
TOTAL CASES DECIDED	**196**	**173**	**159**

MOST COMMON ISSUES ADDRESSED	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Entitlement to wage loss benefits (post 1992)	82	74	58
Claim Acceptance	53	47	45
Is present condition related to the compensable injury	38	34	20
Has worker recovered from the compensable injury	18	10	12
Is worker capable of modified duties	13	5	2
Entitlement to medical aid payment	13	10	7
Request for Medical Review Panel	11	10	4
Mitigation	10	3	0
Entitlement to a permanent partial impairment award	6	3	7
Should responsibility for surgery be accepted	6	3	6
Deeming process	5	6	5
Has worker been overpaid benefits	5	4	3
Discretionary rehabilitation expense	4	1	0
Entitlement to an increase in the permanent partial impairment award	4	1	1
Entitlement to temporary total disability benefits (pre 1992)	4	1	4
Has the permanent partial impairment award been correctly calculated	4	3	2
Is the psychological condition related to the compensable injury	4	1	0
Is worker to reimburse the WCB for overpayment of benefits	3	2	2
Was the vocational rehabilitation plan appropriate	3	1	1
Entitlement to Special Additional Compensation Benefits	2	0	0
Other Issues	33	40	20
TOTAL ISSUES ADDRESSED	**321**	**259**	**199**

RECONSIDERATIONS UNDER SECTION 60.91 OF THE ACT	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Number of requests received	19	9	15
Reconsiderations granted	1	2	6
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

FILE ACCESS APPEALS	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Worker appeals	8	7	10
Employer appeals	2	2	2
TOTAL	**10**	**9**	**12**

Criminal Injuries/Victims' Rights Statistics

TOTAL APPEALS	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Appeals accepted	0	0	1
Appeals partially accepted	1	0	0
Appeals not accepted	3	3	7
TOTAL	**4**	**3**	**8**
Percentage accepted	0%	0%	12.5%
Percentage partially accepted	25.0%	0%	0%
Percentage not accepted	75.0%	100%	87.5%

SERVICE LEVELS

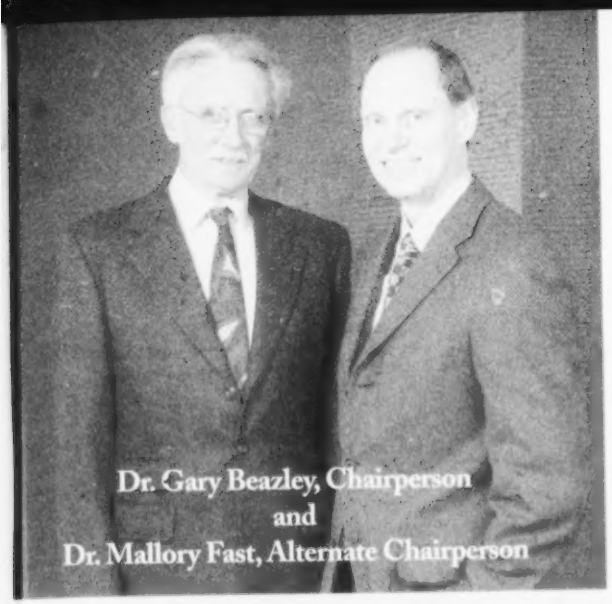
The Service Level Report was instituted in 1997. This tracking system allows the Office of the Registrar to review the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.

The Appeal Commission personally contacts all interested parties with respect to the scheduling of hearings. Historically, the Appeal Commission has been able to schedule a hearing or review within six weeks of receiving an appeal. It is found, however, that this does not allow sufficient time for the parties to fully prepare.

According to Regulation, an appeal panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

SERVICE LEVEL STATISTICS *(Based on decisions published as of December 31, 2005)*	YEAR ENDING 2005	YEAR ENDING 2004	YEAR ENDING 2003
Average time from date appeal received to date of hearing	12.76 wks	14.02 wks	11.38 wks
Average time from hearing date to decision published	11.23 wks	9.87 wks	11.12 wks
[Average time from date of decision to decision published]	*[6.66 wks]*	*[5.59 wks]*	*[5.27 wks]*
TOTAL TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	**23.99 wks**	**23.89 wks**	**22.50 wks**

**Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.*



Dr. Gary Beazley, Chairperson
and
Dr. Mallory Fast, Alternate Chairperson

a message from the MEDICAL REVIEW PANEL CHAIRPERSON

I am pleased to present the report of Medical Review Panels for the year 2005.

The number of panels convened annually has decreased during each of the preceding 3 years, from 40 to 36 to 32 in 2004. Last year only 12 were convened. Comment on the reasons for this can only be speculative. The reduced number of panels might be a sign that the overall system of workers compensation is improving and that workers are being increasingly well-served.

Last year I commented on the use of a worker-centered approach to the conduct of panels. This has continued and I am confident in stating that workers at the conclusion of their involvement with the panel feel that they have had the opportunity to present fully their case and that their opinions and questions have been acknowledged or answered. This approach includes strict attention to ensuring that each worker receives, reads and understands the medical questions to which the panel must respond.

In November 2004 I was invited to appear before the Legislative Review Committee on *The Workers Compensation Act* (the *Act*) where I was questioned and had the opportunity to make suggestions. It was subsequently gratifying to note that included in the narrative supporting one of the recommendations made by the Committee in its report was the statement "MRPs should follow a client-centered approach that fosters information sharing."

In spite of the initiation of an enhanced letter of invitation, there has continued to be low attendance at panels by invited guests such as family physicians, specialists and other primary care providers. I continue to believe that the presence of these individuals at panels is important, if not essential. This belief is supported by statements in the report of the Legislative Review Committee and in the new *Act*. Efforts to improve attendance continue.

Last year I expressed a concern that occasionally panels were faced with one or more questions which were not easily understood. I indicated that a workshop would be held to enhance the knowledge and skills around question writing. Subsequently a detailed analysis of the reports arising from 15 consecutive panels revealed that the problem was not of the magnitude initially suspected. No workshop was scheduled. I believe this speaks positively to the ability of those in the system responsible for question writing.

The reduced number of panels in 2005 allowed me the opportunity to attend more information sessions scheduled throughout the year and to enhance my knowledge and understanding of the greater system and those working in it. This was of value to me.

Again I thank all of those in the Office of the Registrar who have assisted me in striving to provide an exemplary Medical Review Panel system for workers in Manitoba.

Respectfully submitted,

Gary Beazley, M. D., C.C.F.P., F.C.F.P.

about MEDICAL REVIEW PANELS

Medical Review Panels enable the WCB or Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the *Act* allows the WCB or Appeal Commission the discretion to refer a medical matter to a Medical Review Panel for an independent opinion. This may occur when a claim is fairly complex and an independent expert opinion is required.

Subsection 67(4) of the *Act* establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor and this difference affects the worker's entitlement to compensation. A Medical Review Panel must be convened if a difference of opinion, as defined by subsection 67(1) of the *Act*, exists.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the *Act* appoints the Chairperson and the alternate Chairperson. The worker and employer select the other two panel members from a list of physicians, provided by the College of Physician and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer, or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

Medical Review Panel Statistics

TOTAL MEDICAL REVIEW PANELS (MRPs)	Year Ending 2005	Year Ending 2004	Year Ending 2003
MRPs convened	12	32	36
MRPs awaiting scheduling	3	3	17
INITIATED BY			
Primary Adjudication	6	21	30
Review Office	6	7	3
Appeal Commission	0	4	3
CONVENED UNDER			
Subsection 67(3)	3	7	8
Subsection 67(4)	9	25	28

PANELS CONVENED BY AREA OF MEDICAL SPECIALTY	Year Ending 2005	Year Ending 2004	Year Ending 2003
Orthopaedic Surgery	5	22	19
Physical Medicine & Rehabilitation	4	6	8
Ophthalmology	1	0	0
Otolaryngology	1	0	0
Respiratory Medicine	1	2	0
Neurology	0	2	3
Psychiatry	0	0	3
Cardiac Surgery	0	0	1
Neurosurgery	0	0	1
Orthopaedic Surgery/Phys Med & Rehab	0	0	1
TOTAL	**12**	**32**	**36**

SERVICE LEVELS

The scheduling of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

SERVICE LEVEL STATISTICS	2005	2004	2003
Average time from date of request to date MRP held	22.81 wks*	24.32 wks	21.27 wks
Average time from date of MRP to date when report is published	4.74 wks*	4.93 wks	6.12 wks
Average time from date of request to when report is published	**27.55 wks***	**29.25 wks**	**27.39 wks**

**Based on 11 MRP reports released. Of the 12 MRPs convened, 1 report had not yet been released as at January 31, 2006.*

COMMITTED TO FAIRNESS

2005 Appeal Commission & Medical Review Panel Annual Report

THE APPEAL COMMISSION

THE WORKERS COMPENSATION
ACT OF MANITOBA

600 – 330 St. Mary Avenue
Winnipeg, Manitoba, Canada R3C 3Z5

E-mail: appeal@appeal.mb.ca | Internet: www.appeal.mb.ca

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